

OPINION NO. 68-051**Syllabus:**

The renewal of a tax levy authorized by Section 5705.20, Revised Code, for the support of tuberculosis hospitals or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis or for the support of tuberculosis clinics may only be submitted to the electorate at the November election, pursuant to the provisions of Section 5705.25, Revised Code.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: William B. Saxbe, Attorney General, March 15, 1968

Your request for my opinion states that the Board of County Commissioners of Licking County passed the following resolution:

"Be It Resolved by the Board of County Commissioners, County of Licking, State of Ohio:

"That a re-newal of a tax of 0.5 mill be placed on the May Primary ballot for 1968. Said tax to be for the diagnosis, prevention and treatment of tuberculosis, and that such funds be used for the hospitalization of persons infected with tuberculosis, the operation of a Tuberculosis Clinic and the maintenance of a Tuberculosis Registry. That said tax levy be collected for the tax years 1968; 1969; 1970; 1971; and 1972."

and you ask if the question of the renewal of the levy may properly be submitted at the May primary election.

The attempt by the Board of County Commissioners to place the above-described levy before the electorate at the May primary indicates a failure to distinguish between the tax levy authorized under Section 5705.191, Revised Code, and the tax levy authorized under Section 5705.20, Revised Code.

The tax levy authorized in Section 5705.191, Revised Code, is available to the taxing authority of any subdivision (except a board of education) for any of the purposes stated in Section 5705.19, Revised Code, or:

"* * * to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, * * *"(Emphasis added)

This Section contains no limitation upon the amount of millage

outside the ten-mill limitation that may be authorized and the question of the excess levy may be submitted to the electors at either the May primary, or at a special election, or at the November general election.

On the other hand, the tax levy authorized in Section 5705.20, Revised Code, is a supplemental levy available to only the board of county commissioners for the purpose of supplementing general fund appropriations:

"* * * for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, or for the support of tuberculosis clinics established pursuant to section 339.36 or section 339.39 of the Revised Code,
* * *"
(Emphasis added)

This Section does contain a limitation upon the amount of millage outside the ten-mill limitation which may be authorized, to wit: sixty-five one hundredths of a mill; and further provides that the levy shall be submitted in the manner provided in Section 5705.25, Revised Code.

Section 5705.25, Revised Code, provides in part that:

"A copy of any resolution adopted * * * shall be certified by the taxing authority to the board of elections of the proper county prior to the fifteenth day of September in any year, and said board shall submit the proposal to the electors of the subdivision at the succeeding November election.
* * *"
(Emphasis added)

Hence, in order to determine whether the Licking County resolution may be submitted at the May primary, it is necessary to determine whether it is a renewal of a levy authorized by Section 5705.191, Revised Code, or a renewal of a levy authorized by Section 5705.20, Revised Code. Obviously, a levy authorized under one of these sections may not be renewed under the other section. The term "renewal" as it may be used in the ballot is restricted to a renewal of an existing levy in the same amount, Section 5705.25, supra.

In examining the wording of the resolution of the Board of County Commissioners, above quoted, it is apparent that the renewal contemplated is a renewal of a levy authorized by Section 5705.20, Revised Code, which relates to the support of tuberculosis hospitals, the maintenance of residents suffering from tuberculosis and support of tuberculosis clinics.

Therefore, since the county commissioners are attempting to renew a levy authorized under Section 5705.20, Revised Code, and it would be improper to submit it to the electorate at the May primary election, the resolution must, as provided in Section 5705.25, Revised Code, be submitted to the electorate at the November election.